IN THE HIGH COURT OF JUDICATURE AT BOMBAY

A & V A J

ADMIRALTY SUIT NO. 1 OF 2003

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Medbulk Maritime Management ...Plaintiffs

v/s.

VM ‘Euromerchant’ ...Defendant

...

Mr.David C. Gomes for the Plaintiffs.

M/s.Crawford Bayley & Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 28TH JUNE, 2006

JUDGMENT:

1. The Plaintiffs in the plaint claim that the Plaintiffs were the manning agents or crewing agents for the Defendant-vessel m.v. "Euromerchant" (formerly known as m.v. "TIMIOS STAVROS" under a manning agreement dated 10-11-1994. The manning agreement was signed by Kaziras as a Plaintiffs' Director and by one Nikolaos Voudourakis (Voudourakis) as crew manager on behalf of Helm Finance Inc. The vessel's owners were Starbride Shipping Ltd., Helm Finance Inc. were Starbride's agents appointed by them for the Defendant-vessel. There is no dispute that the vessel was owned by Starbride and that the vessel's name was changed from "TIMIOS STAVROS" to "EUROMERCHANT" with effect from 22-1-1999 as per the fax from Helm to the Plaintiffs.

2. As per the manning agreement the Plaintiffs supplied or provided to the Defendant-vessel qualified Filipino licensed and competent officers and crew members necessary for the navigation and performance of the vessel and in connection therewith

incurred on behalf of the vessel and her owners various amounts, expenses and costs, etc. amounting to US$ 39,087.27 between November 2000 and October 2002. The monthly invoices/ statements of account for the said period were duly received by Helm. Out of the said amount of US$ 39,087.27, the Plaintiffs received directly on account from Starbride a sum of US$5,000/- and the Plaintiffs also gave credit to Defendant of another amount of US$ 457/- leaving a balance of US$ 33,630.27 still due and payable by the Defendant-vessel at all times when dealing with the Plaintiffs. The necessaries supplied and services rendered to the Defendant-vessel as per the manning agreement were fully availed off by Starbride as owners of the Defendant-vessel. The monthly bills or statement of accounts were always submitted by the Plaintiffs to Helm but the payments to the Plaintiffs were always made by Starbride, the owners of the Defendant-vessel or sometimes by their managers, Millennium Ship Management S.A. (Millennium). In fact, Helm had no bank account of its own to make its payments to the Plaintiffs or anyone else.

3. The Plaintiffs, therefore, filed the suit against the Defendant-vessel for recovery of the amount. The

vessel was arrested by an order made by this Court and after security was furnished on behalf of the Defendant-vessel, the vessel was released. The Defendant has filed written statement. The principal defence of the Defendant is that the Helm Finance Inc. was not the agent of Starbride the owner of the Defendant-vessel. That Starbride had appointed Millenium as their Managing Company and that there was no privity of contract between the Plaintiff and the Starbride, the owner of the Defendant-vessel. Though the Defendant does not deny that service was provided to the vessel by the Plaintiff, according to the Defendant, the service was provided to the vessel not at the request of the Defendant-vessel or its owner, but the service provided by the Plaintiff to the vessel was at the request of Helm and therefore it is the Helm alone which is liable to make payment to the Plaintiffs. According to the Defendant, the owner of the Defendant-vessel did not have any contractual privity with Helm. The contract of Helm was with one Millenium Shipmanagement Inc.. The Millenium was the managing company of the Defendant vessel. Helm was a service provider/sub-contractor to Millenium. According to the Defendant, Helm acted as service provider to Millenium and not to the

Defendant-vessel alone. It is submitted by the Defendant that as there is no privity of contract between the Plaintiff and the Defendant, there is no question of this court making any decree against the Defendant. According to the Defendant, they had no knowledge of the arrangement between the Helm and the Plaintiff.

4. The parties also produced documents. On the basis of the pleadings and the documents, the court framed following issues on 28-1-2004:-

I S S U E S

1. Whether the Plaintiffs prove that Helm Finance Inc. were the agents of the owners of the Defendant?

2. Whether the Plaintiffs prove that the Manning Agreement dated 10th November 1994, was executed by Helm Finance Inc. as agent of the Defendant?

3. Whether the Plaintiffs prove that the Plaintiffs, under the Manning Agreement dated 10th November, 1994, provided competent officers and crew members to the Defendant?

4. Whether the Plaintiffs prove their entitlement to recover a sum of US$33,630.27 from the Defendant?

5. Whether the Plaintiffs prove their entitlement to recover interest at the rate of 21% per annum from the Defendant?

6. Whether the Plaintiffs prove that the suit claim is for necessaries and/or services in the nature of necessaries provided to the Defendant?

7. Whether the Plaintiffs prove that the suit claim constitutes a maritime lien and/or statutory right of action in rem against the Defendant?

8. Whether the Defendant proves that M/s.Millenium Ship Management Inc. was the Managing Company of the Defendant-vessel?

9. Whether the Defendant proves that Helm Finance Inc. was a service provider/sub-contractor for Millenium Ship Management Inc.?

10. What reliefs?

5. Only Plaintiffs have led oral evidence. The Plaintiffs have examined one Mr.Stylianos K. Kaziras, the person who had signed the Manning Agreement on behalf of the Plaintiffs. The Defendant, on the other hand, did not examine any witness. They have also not led any other evidence in support of their defence.

ISSUES NOS.6 & 7:

6. So far as issues Nos. 6 & 7 are concerned, though the Plaintiffs submitted that the claim of the Plaintiffs was for the price of the necessity namely services provided to the Defendant-vessel, there was no dispute raised at the hearing by the Defendant on this ground. Therefore, in the absence of any dispute being raised on behalf of the Defendant in this regard, issues Nos. 6 & 7 are answered in the affirmative.

ISSUES NOS.8 & 9:

7. So far as issues Nos.8 & 9 are concerned, burden

of proof is cast on the Defendant. The Defendant has not led any oral evidence. The Defendant has also not filed any documentary evidence. However, the evidence produced on record shows that M/s Millenium Ship Management Company even according to the Plaintiffs was the managing company of the Defendant-vessel, so appointed by the owner of the vessel. Therefore, these issues can be conveniently considered while considering issues Nos. 1, 2 & 3, which have to be considered together.

ISSUES NOS.1,2 & 3:

8. So far as issues Nos. 1, 2 & 3 are concerned, it is submitted on behalf of the Plaintiffs that the manning agreement in relation to the Defendant-vessel is between the Plaintiff and the Helm. That agreement is annexed at Exh.A-1 to the affidavit of evidence filed by the Plaintiffs. The Plaintiffs also claim that there is no dispute between the parties about the change of name of the vessel from January, 1999. The Plaintiffs further submit that Voundourakis, the gentleman who signed the manning agreement as the crew manager of Helm has by his letter dated 11-2-2004 has confirmed that he signed

the manning agreement on behalf of Helm and that Helm were the agents of Starbride, the owners for the Defendant-vessel. The said letter dated 11-2-2004 is annexed as Exhibit "F" to the affidavit of evidence. Exhibits "N" to "N-45" are the 46 statements of account received by Helm from time to time from the Plaintiffs showing therein various amounts due and payable by the Defendant-vessel/ their owners to the Plaintiffs for necessaries supplied by Plaintiffs to Defendant-vessel.

. Periodically, Helm would advice the Plaintiffs by faxes or emails about the remittances being made through national Bank of Greece, Shipping Branch, in settlement of Plaintiffs' dues. These faxes/emails are annexed as Exhibit 'U-1', 'U-2', 'U-3', 'U-4' and 'U-5' to Affidavit of evidence, wherein Helm have described themselves as agents of the Defendant-vessel. These facts/emails deal with the Defendant-vessel m.v. "EUROMERCHANT"- crew members' allotments.

. However, inspite of advices from Helm about remittances of the amounts payable to the Plaintiffs, the amounts were actually remitted to the Plaintiffs

directly by the owners of the vessel, Starbride and, sometimes, by their managers, Millennium. This is evidenced by the bank advices from the Bank of the Philippine Islands, Exhibit ‘V’, ‘V-1’, ‘V-2’ and ‘V-3’ to Kaziras’s Affidavit of evidence. These four exhibits clearly evidence the fact that the payments were remitted directly by Starbride to the Plaintiffs. These four exhibits show the Plaintiffs, Medbulk Maritime Management as the beneficiaries of the remittances and Starbride Shipping Ltd. as the ordering customer, who instructed their bank to remit the amount to the Plaintiffs. Exhibits ‘V-4’ and ‘V-5’ to Kaziras’s Affidavit of evidence are also bank advices from the Bank of the Philippine Islands, evidencing the fact that the payments were remitted directly to the Plaintiffs by Starbride’s managers, Millennium. These Exhibits ‘V-4’ and ‘V-5’ show the Plaintiffs, Medbulk Maritime Management as the beneficiaries of the remitted amounts and also show Millennium Shipmanagement as the ordering customer who instructed their bank to remit the funds to the Plaintiffs directly.

. The Plaintiffs submit that there is no evidence that Starbride, the owners of the Defendant-vessel

made any payments to their managers, Millennium. There is no evidence of either Starbride or Millennium having made any payments to the crew members directly. In fact, not only Starbride but even Millennium made payments directly to the Plaintiffs in terms of the manning agreement in part-payments of the amounts due to the Plaintiffs for necessaries supplied to the Defendant-vessel.

. In the cross-examination of Mr.Kaziras , in answer to question 47, Mr.Kaziras has confirmed that the remittances for crew allotments were made only by the owners (Starbride) and not Helm. In answer to question 44 and 45, Kaziras has also confirmed that apart from the payment for crew allotments, Starbride also made other payments to the Plaintiffs and that there payments were settlement of expenses that the Plaintiffs incurred on behalf of Starbride and against outstanding balance of account, though they did not make the payment regularly. In answer to question 46 and 47, the witness has confirmed that Starbride made the last payment of US$ 5,000/- on 23-5-2002 to the Plaintiffs and has further confirmed that this payment of US$5000 was made by Starbride to the Plaintiffs and not by Helm. In answer to

question 55, Kaziras has reiterated that the documents evidencing direct payments from Starbride to the Plaintiffs are annexed as Exhibit ‘V’, ‘V-1’. ‘V-2’ and ‘V-3’ to his Affidavit of evidence and that these documents are Starbride’s instructions to their own bank to remit the funds to the Plaintiffs directly. In answer to question 109 and 110, the witness has confirmed that for the services rendered by the Plaintiffs to the Defendant-vessel, the payments came invariably from Starbride or, at times, from Millennium (Starbride’s managers) and that Millennium were making payments to the Plaintiffs as representative of Starbride. In answer to question 113, the witness has confirmed that the payments received by the Plaintiffs from Starbride or Millennium were always in response to Plaintiffs’ bills raised on Helm. In answer to question 135, the witness has confirmed that the amounts indicated in Exhibit ‘U-1’,‘U-2’, ‘U-3’, ‘U-4’ and ‘U-5’ to his Affidavit of evidence which are faxes from Helm to the Plaintiffs were paid. As stated above, though the advices about remittance of the amounts in Exhibit ‘U-1’, ‘U-2’, ‘U-3’, ‘U-4’ and ‘U-5’ are from Helm as agents of the defendant-vessel to the Plaintiffs the actual payments were always made to

the Plaintiffs by Starbride as the owners of the vessel or, at times, by their managers, Millennium and never by Helm, since, as deposed by the witness-Kaziras, Helm did not even have a bank account to make payments to the Plaintiffs or anyone else. In answer to question 162 that there was no privity of contract between the Plaintiffs and Starbride, the witness has deposed that he disagrees with the suggestion and has confirmed that there was a relationship between the Plaintiffs and Starbride. In answer to question 168 as to on what basis the witness-Kaziras has stated that Helm were agents of Starbride, Kaziras has deposed that the basis is the common practice of all ship owners to have separate companies each owning one ship, separate managers and a common service provider like Helm Finance who is common to all their ships and that the other basis is that the crew allotments and crew expenses was remitted by Starbride directly to the Plaintiffs.

. The crux of the defense was that Helm Finance were not Starbride’s agents for the Defendant-vessel, that Starbride had appointed Millennium as their managers and that Millennium might have appointed Helm as their agents for the vessel and, that there was no

privity of contract between the Plaintiffs and the Starbride, the owners of the Defendant-vessel. This defense is dishonest and stands falsified by the evidence as deposed by Kaziras in his Affidavit of evidence and also in his answers to the cross-examination by the Defendant's Counsel himself. The learned Counsel for the Plaintiffs states that it is very pertinent that there is no evidence on record that Starbride who claim Millennium as their managers ever made any payment to Millennium. There is also no evidence on record that either Starbride or Millennium made any payments directly to the crew members of their wages or any other amounts and also there is no evidence on record that Starbride or Millennium made any payment to Helm. On the contrary, the evidence on record before this Court both in the examination-in-chief and in the cross-examination of the witness proves that for the necessaries supplied by the Plaintiffs to the Defendant-vessel in terms of the manning agreement, the payments for such necessaries were always made directly to the Plaintiffs by Starbride or, at times, by their managers, Millennium through banking channels. If there was no privity of contract between the Defendants i.e. the owners of vessel

(Starbride) and the Plaintiffs as falsely alleged by the Defendants, then Starbride or their Managers Millennium would never have made any payments directly to the Plaintiffs for the necessaries supplied by them to the Defendant vessel owned by Starbride.

9. On behalf of the Defendant, on other hand, it is submitted that the Plaintiffs have not established its connection with the owner of the vessel. There is no privity of contract between the Plaintiffs and the owner of the Defendant-vessel and therefore, according to the Defendant, there is no question of decree being passed. It is submitted that the bills for payment were submitted by the Plaintiffs to Helm always, never to owner of the Defendant-vessel. As the Plaintiffs were not demanding any payments from the owner of the Defendant-vessel, there is no question of this court passing any decree against the owner of the Defendant-vessel for payment of amount. The Defendant relies on answer given on question No.48 by the witness examined on behalf of the Plaintiffs, where he states that payment was always demanded by the Plaintiffs from Helm and never from the owner of the vessel.

10. Now, from the rival submissions and the record of the case, it is clear that the fact that the Plaintiffs provided service to the defendant-vessel is not in dispute. The Plaintiffs claim that they provided the services to the defendant-vessel pursuant to the agreement at Exh.A to the affidavit of evidence of the Plaintiffs. Perusal of that agreement shows that the agreement is between the Plaintiffs and the Helm Finance. The agreement is for providing manning service to the defendant-vessel. The name of the Defendant-vessel is specifically mentioned. On behalf of the Helm, the contract has been signed by one Nikolaos. The Plaintiffs have produced on record a letter addressed by Mr.Nikolaos, who has signed the agreement on behalf of the Helm dated 11-2-2004 at Exh.F to the affidavit of evidence. Perusal of that letter shows that the owner of the vessel is a company called StarBride Shipping Ltd. That Millennium Shipmanagement Inc. hereinafter referred to as Millenium was the company established by Starbride Shipping Ltd. and Millennium was established by Starbride for the purpose of manning its vessel. The Millenium had appointed the Helm to act on his

behalf. So far as manning services are concerned, the letter specifically states that these three companies namely Starbride, Millenium and Helm are sharing the same office telephone, telex, fax, email address and the same staff. They are controlled by the same people. This letter clearly shows that Mr.Nikolaos on behalf of Helm entered into the agreement at Exh.A with the Plaintiffs on instructions from the owner of the vessel. Perusal of the document at Exh.N to Exh.N-45 shows that the Plaintiffs were submitting the bills to Helm. Payments pursuant to those bills as can be seen from the documents at Exh.V, V-1, V-2 & V-3 were made either by the owner-starbride or by the managing company Millenium. Perusal of the written statement filed by the Defendant, specifically paragraph 2 thereof, shows that the Plaintiffs admit that the Millenium was the managing company of the Defendant-vessel. In fact, there is no dispute between the parties that all payments in relation to the crew were made by the owner of the vessel. Perusal of question No.43 in the cross-examination of the witness of the Plaintiffs shows that the Defendant itself asked the witness whether it is correct that all remittance for crew allotment were

made by the owner of the vessel and not by Helm. It is not in dispute as observed above that the crew to the vessel was supplied by the Plaintiffs pursuant to the agreement at Exh.A. The Defendant admits that payment for that crew was made by the Defendant. In my opinion, therefore, the Defendant can not deny that it has no privity of contract with the Plaintiffs. Perusal of the documents at Exh.U, U-1, U-2, U-3, U-4, U-5 and the documents at V, V-1, V-2, V-3 and the line of the cross-examination of the witness of the Plaintiffs shows that payment to the crew members came from the owner of the vessel. The Defendant does not dispute that there was crew on its vessel. It's defence appears to be that it had appointed the Millenium as its manning agent. Therefore, according to the Defendant, the crew was supplied not by the Plaintiffs, but by the Millenium. Therefore, the Defendant could have nonsuited the Plaintiffs by simply producing the evidence on record that it has made the necessary payments to Millenium. There is no evidence produced on record to show that any payment was made by the Defendant to Millenium for the necessary supplied to the vessel. There is no evidence on record to show that either Starbride or the Millenium ever made payment directly to the

crew members. There is also no evidence on record produced by the Defendant that any payment on account of crew payment was ever made by the owner of the defendant vessel or by the Millenium to Helm. All the payments for crew members was received by the Plaintiffs and it is the Plaintiffs who have made payment to the crew members and the amounts on account of payment to the crew have been received by the Plaintiffs either from Starbride-the owner of the vessel or from Millenium. In my opinion, therefore, the Plaintiffs have established by oral and documentary evidence that the Helm was duly authorised by the owner of the Defendant-vessel to enter into the agreement with the Plaintiff and that in entering into agreement with the Plaintiffs, the Helm acted as agent of the owner of the Defendant-vessel by the Plaintiff. There is no dispute that the crew as claimed by the Plaintiffs was supplied to the Defendant-vessel. Issues Nos. 1, 2 & 3 are, therefore, answered in the affirmative in favour of the Plaintiffs.

. In view of the above discussion, issues Nos. 8 & 9 are answered accordingly.

ISSUES NOS.4 & 5:

11. So far as issues Nos. 4 & 5 are concerned, the Plaintiffs have produced necessary material to show that the amount of US$33630.25 is payable to them on account of the service that was provided to the defendant-vessel. In so far as the claim of the Plaintiffs for interest on the amount is concerned, the Plaintiffs are claiming interest at the rate of 21% p.a. There is no evidence on record as to what would be the appropriate rate of interest. In my opinion, therefore, considering the pros and cons of the matter and considering that the amounts were payable on account of payment to be made to the crew members, it would be appropriate to award the interest at the rate of 12% p.a.

12. The Defendant is, therefore, directed to pay to the Plaintiffs an amount of US33630.25 with interest at 12% p.a. from the date of institution of the suit till the date of realisation. On behalf of the Defendant-vessel, a bank guarantee has been furnished to secure the release of the vessel from the arrest. The Prothonotary & Sr.Master is, therefore, directed

to encash the bank guarantee furnished by the Defendant and to pay the decretal amount from out of the amount of the bank guarantee to the Plaintiffs in accordance with the law.

13. Suit disposed of.

14. At the request of the learned Counsel appearing for the Defendant, the Prothonotary & Sr.Master of this Court is directed to encash the bank guarantee after a period of two weeks from today. Defendant undertakes to keep the bank guarantee current till that date.

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